IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Munalal & Ors. v. State of Rajasthan & Anr.

S.B.CIVIL WRIT PETITION NO.1629/1999
under Article 226 of the Constitution of India.

Date of Order : 11th August, 2005

P R E S E N T
HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. M.Mridul, Sr.Advocate assisted by Shri R.N. Upadhyay, for the petitioners.
Mr. Yashwant Mehta, for the respondents.

BY THE COURT :

The Municipal Council, Bhilwara under an advertisement dated 22.10.1996 invited applications from eligible candidates for the purpose of appointment to the post of Safai Karamchari (Sweepers) against existing 200 posts. The petitioners being eligible applied for appointment in pursuant to the aforesaid advertisement. The petitioners were interviewed by a competent selection committee and on being selected by an order dated 6.3.1999 they were given appointment as Sweepers along with number of other persons.

The Municipal Council, Bhilwara by an another dated 16.4.1999 cancelled the order dated 6.3.1999 with regard to 29 persons including present petitioners. The order dated 16.4.1999 was passed by the Commissioner, Municipal Council, Bhilwara cancelling the appointments of the petitioners on the count that the petitioners concealed certain facts and also placed wrong facts while seeking appointment under advertisement dated 22.10.1996. Being aggrieved by order dated 16.4.1999 present writ petition is preferred by the petitioners.

The contention of counsel for the petitioners while giving challenge to the order dated 16.4.1999 is that the petitioners submitted applications in pursuance of advertisement and also submitted affidavits to the effect that no one except them from their family has applied for appointment in pursuance of advertisement dated 22.10.1996. By term “family” they meant from their own unit of family.

A reply to the writ petition has been filed on behalf of the respondents stating therein that the petitioners communicated wrong fact to the employer by stating on oath that no one including their brother, sister or parents have applied for appointment in pursuant to the advertisement dated 22.10.1996. This wrong information supplied by them misled the employer council to the extent that the petitioners who were

not eligible to be recruited as Sweepers were treated as eligible to be considered for appointment as Sweepers. It is also stated by counsel for the respondents that in view of the directions given by this Court vide judgment dated 21.10.1992 in SBCWP No.1177/92, Sushila v. State of Rajasthan & Ors., only one member from one family was to be treated eligible for appointment and for the purpose affidavits were sought from the petitioners and they supplied wrong information. In these circumstances the order impugned dated 16.4.1999 was passed cancelling the appointments of the petitioners.

Heard counsel for the parties.

On behalf of petitioners it is contended that under the Rajasthan Municipalities (Class-IV Employees) Rules, 1963 (hereinafter referred to as "the Rules of 1963") there is no restrainment that only one person from the family shall be employed. It is also contended that the petitioners are coming from lowest rung of social hierarchy, therefore, if there is any mistake on their part while seeking employment as Sweepers that is required to be dealt with leniently.

The contention of the respondents that this Court by judgment dated 21.10.1992 in the case of Sushila (supra) directed to make appointment of one

person from one family is in fact misreading of judgment. The judgment dated 21.10.1992 applies to the recruitment required to be made in Municipal Corporation, Jaipur and not to other Municipal Corporations or Municipal Councils of State of Rajasthan. The guidelines prescribed by the Court in the aforesaid case are having no application for Municipal Council, Bhilwara. Beside the above, the guidelines provided under the judgment above mentions that preference should be given to the persons from whose family there is no person is in employment, as such the condition referred is only with regard to grant of preference. It does not decide the eligibility.

The eligibility for recruitment as Sweepers is prescribed under the Rules of 1963. The appointments were given to the petitioners by adhering the procedure prescribed under the Rules of 1963. The petitioners, therefore, were selected on the basis of their merit. Their error in submitting an information which was not correct is certainly pardonable as the Rules of 1963 nowhere prescribes that preference shall be given to the persons whose no member of family is in employment. The petitioners are coming from lower strata of the society, commission of little error is not unexpected from them and they are also required to be punished for such errors but punishment should always be proportionate to the delinquency. Employment

is a form of property and while snatching the same a caution is required to be taken. The employer should also understand the prevailing social circumstances which some time compels the person to commit error even knowingly. The intensity of the error is required to be measured by employer or the persons who are helm of affairs by taking into consideration the objective conditions and circumstances prevailing. In the present circumstances where the unemployment is spreading at large, a person desirous to employment on the lowest post may commit a little error. Such type of errors are required to be pardoned.

Counsel for the respondents states that in the case of Dharampal v. State of Rajasthan, reported in 2001 WLN 538, this Court has taken the view that the persons who have concealed material fact while seeking employment are not entitled to be recruited. In my opinion the judgment referred above is having no application in the present controversy as in the case of Dharampal (supra) this Court was considering the recruitment of police constables and not of Sweepers. The police services are quite responsible services. A constable is always required to be very disciplined being a member of force. Beside this, in the case of Dharampal (supra) the Court has taken into consideration the provisions of Rule 15 of the Rajasthan Police Subordinate Service Rules, 1989 which makes a person ineligible for appointment who has

concealed a fact while seeking employment. No such provision is available under the Rules of 1963.

The petitioners belong to the lowest rung of social order of our society. They are seeking appointments on the lowest post i.e. of Sweepers. The persons seeking appointment on the post of Sweepers are not highly educated or the persons knowing each and every consequence of their action while seeking employment. It is true that the petitioners while seeking employment wrongly stated that no one from their family including their brother, sister or parents have applied for appointment in pursuant to the advertisement dated 22.10.1996, but this cannot be a sole reason making them disentitled to be appointed on the lowest posts.

The petitioners are seeking appointment on the post of Sweepers which is mostly filled in by the persons belonging to a specific community which is part of Scheduled Castes and that too at the lowest pedestal of Scheduled Castes. I am of the firm opinion that the error committed by the petitioners is not so serious which may debar them from employment. Once they were found selected by the competent selection committee and appointment was accorded to them then some lesser punishment could have been imposed upon them instead of terminating them from services.

In view of whatever stated above, this petition for writ is allowed. The order dated 16.4.1999 is quashed and the petitioners are declared entitled to be reinstated in service. However, they shall not be entitled for back wages as they have not worked with the respondents in the period referred above.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.